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IN THE

# SUPREME COURT OF THE UNITED STATES

October Term, 1963

Docket Number 331

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SINCLAIR DAVIS,
R. V. "BOB" SCHULTZ,
LOYD MARTIN FINCH, Suing Jointly, Severally and as Representatives of a Class Similarly Situated, - - - - - Appellants,

*versus*

CITY OF BOWLING GREEN, KENTUCKY, a Second Class City in the Commonwealth of Kentucky,
WATER-SEWER AND SANITATION COMMISSION of Bowling Green, Kentucky, Composed of Jack Holland, Emory Cardwell, Fred Austin, P. P. Dumas, C. C. Coleman and Leonard Hildreth, Chairman (Sued Individually, as Official Members and as a Political Subdivision), - - - - - Appellees.

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Civil Action No. 933.

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF KENTUCKY,
AT BOWLING GREEN, KENTUCKY.

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## APPELLANTS' REPLY AND BRIEF TO APPELLEES' MOTION AND BRIEF.

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# INDEX.


PAGE

**Historical Background** ..... 2– 9

**The Kentucky Forefathers Followed the Wisdom of Our Federal Scholars** ..... 9–10

**Points and Authorities** ..... 10–15

*Monroe* v. *Pape*, 365 U. S. 167, 5 L. Ed. 2d 492, 81 S. Ct. 473 ..... 10

*Shelley* v. *Kraemer*, 334 U. S. 1, 68 S. Ct. 836, 92 L. Ed. 1161 (1948) ..... 11

*Hurd* v. *Hodge*, 334 U. S. 24, 68 S. Ct. 847, 92 L. Ed. 1187 (1948) ..... 11

*Baker* v. *Carr*, 369 U. S. 186, 82 S. Ct. 691 (1962) . 11–15

**Argument** ..... 15–20

**Conclusion** ..... 21

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## APPELLANTS' REPLY AND BRIEF TO APPELLEES' MOTION AND BRIEF.

## HISTORICAL BACKGROUND.

The qualified voters of the City of Bowling Green, Kentucky were *denied* the "*right of election*" and the "*right to vote*" on the Ten Million Dollar Bonded Indebtedness created by City Ordinance, which "*rights*" were secured, protected and "*guaranteed*" to them by *Section 157, Kentucky Constitution,* to-wit:

> "*Sec. 157. Tax Rate; indebtedness; submission of question to Voters—*
>
> ". . . No county, *city,* town, taxing district, or other municipality, *shall be authorized or permitted to become indebted, in any manner or for any purpose, to an amount exceeding the annual income, in any year, without the assent of two-thirds of the voters thereof, voting at an election* to be held for that purpose; and any indebtedness contracted in violation of this section shall be *void.*"

It is admitted that the Ten Million Dollar bonded indebtedness enacted by Ordinance of the City of Bowling Green, Kentucky for its agency, The Water-Sewer-Sanitation Commission, far exceeds the "annual income of the city" of Bowling Green, Kentucky, which is approximately $1,055,000.00 each year; and further admitted that the people were denied the RIGHT OF ELECTION AND THE RIGHT TO VOTE thereon.

The "*right of election*" and the "*right to Vote*" possessed with the people, in such an instance, by virtue of Section 157 of the Kentucky Constitution, are

*integral and component parts* of the "Kentucky Republican Form of Government", which our state constitutional forefathers obeyed in concert with the federal mandate contained in Article IV, Section 4, Uinted States Constitution (Guaranty Clause), which reads:

> "The United States Shall *Guarantee* to every *State* in this Union a Republican Form of Government."

The federal mandate in the Guaranty Clause merely meant as each new state came into the Union it could not set up a hierarchy, monarchy, dictatorship or tyranny—it must be a "republican form of government"—with the "power" in the hands of the people, not the select few; nor could any state have set up a "communistic form of government", which then was not specifically known, but yet was excluded.

## THE POWER OF DEBT IS DANGEROUS IT IS THE POWER OF SLAVERY.

Debt is a force. It is abstract in its creation, but commands human labor in repayment of the obligation. As the elemental forces have moved matter, the "power of debt" has moved the course of human history. It has been a compelling cause throughout centuries of wars, revolutions, insurrections, revolts in man's struggle for freedom.

In writing these fundamental constitutional liberties, our state and and federal forefathers viewed the 6,000 years of bloody history of man's tyranny over

man, as the experiences to guide their wisdom in selecting the safeguards for our freedom and liberty we cherish today.

Some of their forefathers, or themselves, lived in the *sewers* of France to escape their *debts*. This Nation originally was but the composite of a group of refugees fleeing from the fear of or escape from "Debtor Prisons" in Europe. They knew the cruelty of the guillotine; they saw women imprisoned in the Basties of France, who gave birth to babes either to be eaten by dungeon rats or else never to see the light of day. They saw the exiles of human flesh to work unto death in the galleys of Britain's ships upon its seven tyrannical seas, or in the salt mines of Russia or the torture chambers of the Orient. They knew the history of *feudalism*, where the power was in the hands of a few and how the interest rates were increased, which, in turn, created *serfdom*, when the innocent child was bound to the land to work until the false debt of his deceased parents was repaid. They saw where history proved that the "*power of debt*" could and did create "slavery not only over the living but posterity." Our forefathers knew that until "liberty" could become a reality for the masses the world would continue to be inhabited by those who slave and those who live on slavery.

The Pilgrims who crossed the black waters of the mighty Atlantic to land at Plymouth, realized the "power of debt" and wrote in their creed, The Mayflower Compact, a proviso that each seventh year all debts among themselves were to be cancelled.

Our constitutional scholars knew the POWER OF DEBT was dangerous, and that it must always be guarded with the greatest of fear.

*Mr. Jefferson* said,

> "I PLACE *ECONOMY* AMONG THE FIRST AND MOST IMPORTANT OF REPUBLICAN *VIRTUES*, AND *PUBLIC DEBT* AS THE GREATEST OF THE DANGERS TO BE FEARED."

From Paris in 1789, *Mr. Jefferson* wrote to *Mr. Madison:*

> "*DEBT IS A CURSE.* WHETHER ONE GENERATION OF MEN HAS A RIGHT TO BIND ANOTHER IS A QUESTION OF SUCH CONSEQUENCE AS NOT ONLY TO MERIT DECISION, *BUT PLACE ALSO, AMONG THE FUNDAMENTAL PRINCIPLES OF EVERY GOVERNMENT.* That no such obligation can be transmitted I think very capable of proof. I set out on this ground which I suppose to be self-evident; THAT THE EARTH BELONGS IN *USUFRUCT to the living*, that the dead have neither right nor power over it.
>
> "The portion occupied by any individual ceases to be his when himself ceases to be and reverts to the society. If the society has formed no rules for the appropriation of its lands in severalty, it will be taken by the first occupants. These will generally be the wife and children of the decedent."

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*Footnote:* The forefathers knew the CRUELTY of the ROMAN LAW in regard to the "*Power of Debt.*"

"After the judicial proof or confession of the debt, thirty days of grace were allowed before a Roman was delivered into

the power of his fellow-citizen. In prison, twelve ounces of rice were his daily food; he might be bound with a chain of fifteen pounds weight; and his misery was thrice exposed in the market-place to solicit the compassion of his friends and countrymen. At the expiration of thirty days, the *debt* was discharged by the LOSS OF LIBERTY OR LIFE; the *insolvent debtor was either put to death or sold in foreign slavery beyond the Tiber.*"

(Quoted From: "*The Decline and Fall of the Roman Empire,*" Vol. 2, Page 1472, by Edward Gibbon, The Heritage Press, New York.)

"If they have formed rules of appropriation, those rules may give it to the wife and children, or to some of them, or to the legatee of the deceased. So they may give it to his creditors. But the child, the legatee or creditor take it, not by any NATURAL RIGHT, BUT BY A LAW OF THE SOCIETY OF WHICH THEY ARE MEMBERS AND TO WHICH THEY ARE SUBJECT. THEN NO MAN CAN BY NATURAL RIGHT OBLIGE THE LANDS HE OCCUPIED, OR THE PERSONS WHO SUCCEED HIM IN THAT OCCUPATION, *TO THE PAYMENT OF DEBTS CONTRACTED BY HIM.* FOR IF HE COULD, HE MIGHT DURING HIS OWN LIFE EAT UP THE *USUFRUCT* OF THE LANDS FOR SEVERAL GENERATIONS TO COME, AND THEN THE LANDS WOULD BELONG TO THE DEAD AND NOT TO THE LIVING WHICH IS THE REVERSE OF THE PRINCIPLE."

"WHAT IS TRUE OF EVERY MEMBER OF THE SOCIETY INDIVIDUALLY, IS TRUE OF THEM ALL COLLECTIVELY, SINCE THE RIGHTS OF THE WHOLE CAN BE NO MORE THAN THE SUM OF THE

RIGHTS OF THE INDIVIDUALS. THEN NO GENERATION CAN CONTRACT *DEBTS* GREATER THAN MAY BE PAID DURING THE COURSE OF ITS OWN EXISTENCE."

*Mr. Jefferson* said,

"We are ruined, Sir, if we do not overrule the principle that 'The more we owe, the more prosperous we shall be'."

(From Letters written by Thomas Jefferson.)

* * * * *

Gentlemen, some of *Thomas Paine's* statements in "*The Rights of Man*" blend in with the depth of the subject matter, and we quote some briefly:

"Every age and generation must be free to act for itself, in all cases, as the ages and generations which preceded it. This vanity and presumption of governing beyond the grave, is the most ridiculous and insolent of all tyrannies. *Man has no property in man; neither has any generation* which are to follow."

Later, in Mr. Paine's "*Rights of Man*", he wrote:

". . . and consequently that all men are born equal, and with equal natural rights, in the same manner as if posterity had been continued by *creation instead of generation*, the latter being only the mode by which the former is carried forward; *and consequently, every child born into the world must be considered as deriving its existence*

*from God. The world is as new to him as it was to the first man that existed, and his natural right in it is of the same kind."*

---

*Footnote:* u' su fruct—*usufruct*—u'zu-frukt—usufructus (use plus fruit)—*Roman and Civil law*, the right of using and enjoying the fruits or profits of an estate or other thing belonging to another, without impairing the substance. This right is generally treated as a personal servitude and includes both the use and the enjoyment of the fruits. Also, by extension, a similar right or allowed in things consumed in the using."

## TOM PAINE'S DEFINITION OF A CONSTITUTION.

"*A constitution is not a thing in name only, but in fact.* It has not an ideal, but a *real existence;* and wherever it cannot be produced in a visible form, there is none. *A constitution is a thing antecedent to a government, and a government is only the creature of a constitution. The constitution of a country is not the act of government,* but OF THE PEOPLE constituting a government. It is the *body of elements,* to which you can refer, *and quote article by article;* and *contains the principles of which the government shall be established,* the form in which it shall be organized, the powers it shall have, the *mode of elections,* the duration of parliaments, or by whatever name such bodies may be called; the powers which the executive part of the government shall have; and, in fine, every thing that relates to the complete organization of a civil government, and the principle on which it shall act, and by which it shall be bound. A constitution, therefore, is to a government, what the laws made afterwards by that government are to a court of judicature. The court of judicature does not make

laws, neither can it alter them; it only acts in conformity to the laws made; and the government is in like manner governed by the constitution."

* * * * *

*Mr. Paine* said at another time,

"On the contrary, government in a well-constituted republic, requires no belief from man beyond what his reason authorizes. He sees the RATIONALE of the WHOLE SYSTEM, ITS ORIGIN, and ITS OPERATION; and as it is best supported WHEN BEST UNDERSTOOD, the human faculties act with *boldness,* and acquire, under this form of government, a GIGANTIC MANLINESS."

* * * * *

## THE KENTUCKY FOREFATHERS FOLLOWED THE WISDOM OF OUR FEDERAL SCHOLARS.

The Kentucky Constitutional forefathers cautiously watched and guarded the "*power of debt*" of government and person.

Many instances can be cited, section by section, article by article, where they watch carefully the "power to tax" and the "power of debt limit", always leaving the "power in the hands of the people", realizing the *dangerous* propensities and effects of these forces as history has shown.

The state forefathers in the Constitutions of 1792, 1799, 1850, and 1891 provided that the person of a debtor, where there is not strong presumption of fraud, shall not be continued in prison after delivering up his estate for the benefit of his creditors.

Commencing with the Kentucky Constitution of 1850, and again sustained in the Constitution of 1891, even the STATE LEGISLATURE OF KENTUCKY (which represents all the people) could not exceed a debt limit of $500,000.00 WITHOUT THE VOTE OF THE FREE PEOPLE (Section 35, Ky. Const. of 1850; Section 49, the present Ky. Const. 1891).

And by Section 157, the present Kentucky Constitution, our forefathers limited the cities and towns and their agencies—not to create indebtedness beyond their annual income "*in any manner*" or for "*any purpose*", without an *election* and *vote of the people*. This "right of election", this "right to vote" became vested with the people—it is an integral part of our Kentucky Republican Form of Government. But in the instant case, *these rights* have been *destroyed* by a *legislative* "*devise*", upheld by state "*judicial abnegation.*"

What can be more fundamental in a Republic than the Right of an Election—what can be more basic than the right to vote?

## POINTS AND AUTHORITIES.

The Jurisdictional Statement adequately sets forth the Acts of Congress and the United States Constitutional authority appropriate to this case, such as when the right to vote and right of election, once granted and secured by a State Constitution, has been destroyed, as is admited in the instant case.

*Monroe* v. *Pape*, 365 U. S. 167, 5 L. Ed. 2d 492, 81 S. Ct. 473 (1961), is cited to prove that we did not first

have to exhaust state remedies, before proceeding into the federal jurisdiction, which we did in the instant case. After the three-judge constituted Court below entered judgment in this case, a suit was filed in the state court by *Ada Parsley* v. *The City of Bowling Green,* involving the same subject matter, wherein the appellants intervened, the ruling adverse to appellants. Appellants here are entitled to the appropriate writs or remedies to be issued by the Supreme Court to enjoin the state officials from enforcing said state court judgment. *Shelley* v. *Kraemer,* 334 U. S. 1, 68 S. Ct. 836, 92 L. Ed. 1161 (1948); *Hurd* v. *Hodge,* 334 U. S. 24, 68 S. Ct. 847, 92 L. Ed. 1187 (1948). (See: Jurisdictional Statement, pages 13 and 14.)

**The Theory of Baker v. Carr is Cited as the Analogy for the Controlling Law.**

*Baker* v. *Carr,* 369 U. S. 186, 82 S. Ct. 691 (1962), the Tennessee reapportionment case, upheld the citizen's right to vote under the Tennessee Constitution and the U. S. Constitution (Guaranty Clause, 14th Amendment) and the Civil Rights statutes, because that right was debased by a state through "judicial abnegation" and "legislative devise or inaction."

Quoting MR. JUSTICE BRENNAN, to-wit:

> "This civil action was brought under 42 U.S.C. Sec. 1983 and 1988, 42 U. S. C. A. Sec. 1983, 1988 to redress the alleged deprivation of federal constitutional rights. The complaint, alleging that by means of a *1901 statute of Tennessee apportioning* . . . plaintiffs and others similarly situated,

are denied the equal protection of the laws accorded them by the Fourteenth Amendment to the Constitution of the United States by virtue of the *debasement* of their votes." 82 S. Ct. 694.

"This Court has frequently sustained District Court jurisdiction under 28 U.S.C. 1343 (3), 28 U.S.C.A. 1343 (3) or its predecessors to entertain suits to redress deprivations of rights secured against state infringement by the Equal Protection and Due Process Clauses of the Fourteenth Amendment (cases cited). (Footnote 19, *Baker* v. *Carr,* 82 S. Ct. 691, page 101.)

". . . *A citizen's right to a vote free of arbitrary* impairment by state action has been judicially recognized as a right secured by the Constitution, when such impairment resulted from dilution by a false tally, cf. *U. S.* v. *Classic,* 313 U. S. 299, 61 S. Ct. 1031, 85 L. Ed. 1368; or by a refusal to count votes from arbitrarily selected precincts, cf. *U. S.* v. *Mosley,* 238 U. S. 383, 35 S. Ct. 904, 59 L. Ed. 1355, or by a stuffing of the ballot box, cf. *Ex Parte Siebold,* 100 U. S. 371, 25 L. Ed. 717; *U. S.* v. *Saylor,* 322 U. S. 385, 64 S. Ct. 1101, 88 L. Ed. 1341." Page 705, *supra.*

*"The guaranty is of a republican form of government."*

*"The guaranty necessarily implies a duty on the part of the States themselves to provide such a government."*

*"By the Constitution,* a republican form of government is guaranteed to every state in the Union, and the distinguishing feature of that form is the right of the people to choose their own officers for

governmental administration, and pass their own laws in virtue of the legislative power reposed in representative bodies, whose legitimate acts may be said to be those of the people themselves; ***BUT, WHILE THE PEOPLE ARE THUS THE SOURCE OF POLITICAL POWER, THEIR GOVERNMENT, NATIONAL AND STATE, HAVE BEEN LIMITED BY WRITTEN CONSTITUTIONS, AND THEY HAVE THEMSELVES THEREBY SET BOUNDS TO THEIR OWN POWER,*** as against the sudden impulses of mere majorities."

(Footnote 48, pp. 712-13, *Baker* v. *Carr, supra.*)

"WHEN CHALLENGES TO STATE ACTION RESPECTING MATTERS OF ADMINISTRATION OF AFFAIRS OF A STATE AND OFFICERS THROUGH WHOM THEY ARE CONDUCTED REST ON CLAIMS OF CONSTITUTIONAL DEPRIVATION WHICH ARE AMENABLE TO JUDICIAL CORRECTION, THE *SUPREME COURT WILL ACT UPON ITS VIEW OF MERITS OF THE CLAIM.*"

(Examples cited—*Baker* v. *Carr,* 82 S. Ct. 716.)

Quoting *MR. JUSTICE DOUGLAS,* concurring in *Baker* v. *Carr:*

"*So far as voting rights are concerned, there are large gaps in the Constitution.* YET THE RIGHT TO VOTE IS INHERENT IN THE REPUBLICAN FORM OF GOVERNMENT ENVISAGED BY ARTICLE IV, SECTION 4 OF THE CONSTITUTION . . ."

". . . A 'REPUBLICAN FORM' OF GOVERNMENT IS GUARANTEED EACH STATE BY ARTICLE IV, SECTION 4 . . ."

At page 726, Vol. 82 Sup. Ct., JUSTICE DOUGLAS so well remarks,

"THERE IS NO DOUBT THAT THE FEDERAL COURTS HAVE JURISDICTION OF CONTROVERSIES *CONCERNING VOTING RIGHTS.* The Civil Rights Act gives them authority to redress the deprivation 'under color of any State law' of any 'right, privilege or immunity secured by the Constitution of the United States or by any Act of Congress providing for equal rights of citizens . . .' 28 U.S.C. Sec. 1343 (3), 28 U.S.C.A. Sec. 1343 (3). And 28 U.S.C. Sec. 1343 (4), 28 U.S.C.A. Sec.1343 (4) gives the federal courts authority to award damages or issue an injunction to redress the violation of 'any Act of Congress providing for the protection of civil rights, *including THE RIGHT TO VOTE.*' For as stated in U. S. v. Classic, 313 U. S. 299, 326 S. Ct. 1031, 85 L. Ed. 1368:

> 'Misuse of power, possessed by virtue of state law and made possible only because the wrongdoer is clothed with the authority of state law, is action taken "under color of" state law.' And see, *Monroe* v. *Pape,* 365 U. S. 167, 81 S. Ct. 473, 5 L. Ed. 2d 492."

*"THE RIGHT TO VOTE IN BOTH FEDERAL AND STATE ELECTIONS* WAS *PROTECTED BY THE JUDICIARY LONG BEFORE THAT RIGHT RECEIVED THE EXPLICIT PROTECTION IT IS NOW ACCORDED BY Sec. 1343 (4)."* (Cases and examples cited, P. 726, Justice Douglas in Baker v. Carr.)

*MR. JUSTICE DOUGLAS* continued:

> "Intrusion of the Federal Government into the election machinery of the States has taken numerous forms—investigations . . . criminal proceedings . . . collection of penalties . . . suits for declaratory relief and for an injunction . . . suits by the United States under the Civil Rights Act to enjoin discriminatory practices . . ." And quoting Judge McLaughlin (P. 727):
>
> 'The whole thrust of today's legal climate IS TO END UNCONSTITUTIONAL DISCRIMINATION. IT IS LUDICROUS TO PRECLUDE JUDICIAL RELIEF WHEN A MAINSPRING OF REPRESENTATIVE GOVERNMENT IS IMPAIRED. *LEGISLATORS HAVE NO IMMUNITY FROM THE CONSTITUTION.* THE LEGISLATURES OF OUR LAND SHOULD BE MADE AS RESPONSIVE TO THE CONSTITUTION OF THE UNITED STATES AS ARE THE CITIZENS WHO ELECT THE LEGISLATORS.'"

* * * * *

**ARGUMENT.**

Debt is historically and presently a form of slavery. The federal forefathers mandated that each state would have a republican form of government. The Kentucky forefathers obeyed the mandate. It is just as important to vote upon debt limitation, as it is to vote for an official. The right to vote here is "vested" and untouchable unless the people consent by vote and elec-

tion, but it has been destroyed in this case and they even admit the denial.

When they did not hold an election, when they did not allow the people to vote, it was a denial of due process of law.

The State Government cannot do indirectly what it is prohibited from doing directly. It cannot come through the "back-door" when it is prohibited through the "front-door" of liberty.

They say they did not "discriminate" because, using their words, *"All were treated alike."* IT WAS *TOTAL* AND *WHOLESALE* DISCRIMINATION AGAINST THE ENTIRE BODY OF CITIZENS—every creed, every color, every class, every voter—WAS DENIED, DEBASED, DEPRIVED of his constitutional guarantee! *Their action is the complete ANNIHILATION OF SECTION 157 Kentucky Constitution*—and their legislative "devise" upheld by "judicial abnegation" is as though they had taken a pencil and by their state authority in government STRICKEN EVERY WORD FROM SECTION 157 Kentucky Constitution: *It is "government" ruling the "Constitution" and the "People", the very reverse of what we stand for in our "American Way of Life." And if these things be permitted to continue, this Nation, Gentlemen, is headed for the graveyard of history!*

Each and every argument they make fades in the broad-daylight of reason and truth.

*First*, they cite *Carson* v. *Sewer Com. of Brocton*, 182 U. S. 398, 21 S. Ct. 860, about municipal "rates", but we are not here concerned with "rates"; the dead

center issue here is that the RIGHT TO VOTE AND THE RIGHT OF ELECTION HAS BEEN DESTROYED!

*Second,* they say "We can find no provision of the Federal Constitution which requires a vote of the people in the issuance of bonds by a municipality or which provides for a vote of the people on a local issue." And we ask, Mr. Appellee a question: Can you find a provision in the Federal Constitution where the state citizenry must vote for a Governor? The answer is "No", but once that right to vote for a Governor or to vote on "local bonded indebtedness" has been granted by state constitutional guarantees, it shall be upheld always and foremost, if we are to remain a democracy!

*Third,* they cite an old case in 1904, *Pope* v. *Williams,* 24 S. Ct. 573, 48 L. Ed. 817, where the "guarantee" had not been granted, but in this case the right to vote and the right of election HAS BEEN GRANTED, CEMENTED, SECURED, PROTECTED IN THE KENTUCKY CONSTITUTION and now totally annihilated by state action!

*Fourth,* they say the United States Supreme Court is bound by the "legislative devise" and this "judicial abnegation"! They say it has been upheld for 40 years in Kentucky as "public policy"! When did "public policy" ever supersede State Constitutional Rights of the Free People? And if they be right about their fading argument that the State Decisions are binding on the U. S. Supreme Court, then if that be true, today, Arkansas, Mississippi, Louisiana, Alabama, Georgia

and Tennessee would be RULING THE FEDERAL COURTS on desegregation and reapportionment and a thousand and one things!

*Fifth,* they *CONFESS* to the "legislative devise" and the "judicial abnegation", which is self-evident in the very wording they use to circumvent the constitutional guarantee, to-wit:

> "K.R.S. 58.010 Definitions ('Governmental Agency' means the Commonwealth of Kentucky as such acting by or through any department, instrumentality or agency thereof, *or* any county, *city, agency or instrumentality* or other political subdivision of the Commonwealth, or agency, or instrumentality thereof."

Then say by K.R.S. 58.040,

> ". . . and that it does not constitute an *indebtedness* of the governmental agency within the meaning of the Constitution."

But Section 157 of the Kentucky Constitution so plainly replies, upholding this CONSTITUTIONAL RIGHT TO VOTE AND RIGHT OF DEBT AND RIGHT OF ELECTION BELONGING UNTO THE FREE PEOPLE, to-wit:

> ". . . *No* county, *city, town, taxing district, or other municipality, shall be authorized or permitted to become indebted in any manner or for any purpose, to an amount exceeding the annual income,* in any year, *without the assent* of two-thirds *of the voters thereof, voting at an election*

*to be held for that purpose;* and any indebtedness contracted in violation of this section shall be *void.*"

By their "legislative devise" (Ch. 58) they admit that they are an instrumentality of the city and the town; they admit by definition in the *first breath* that they *squarely* come under the provisions of Section 157 Kentucky Constitution, and in the last breath, they try to close the "*gap*" *of the* "*devise*" by saying, "it does not constitute an indebtedness of the governmental agency within the meaning of the Constitution."

It is so plain, so clear—it is precise in fact that it is a "LEGISLATIVE SCHEME" and "DEVISE" to circumvent, and in turn, has destroyed the fundamental and basic rights of these people to vote upon debt limitation, as guaranteed by the people's creature: The Kentucky Constitution!

The devise severs, and disfranchises, and "takes away" the last little thread of power and influence the plain ordinary citizen has— his right to vote! Sever that right, and soon, all power of government will fade from the "hands of the people" into the hands "of the select few", the very reverse of our "way of life."

*Sixth*, in passing to their next flimsy point, they say that *Baker* v. *Cary* only applied to a "fractional voter"! Suppose the State Legislature of Tennessee had completely denied the citizens of "Memphis", "Knoxville", "Chattanooga" and "Nashville" of all right of election and of all right to vote, secured by the Tennessee Constitution? What then, Mr. Appellee,

would be your answer? What then would be the difference between the "fraction" and the "whole"? Mr. Jefferson gives us the answer, Sir! "What is true of every member of the society individually, is true of them all collectively, since the rights of the whole can be no more than the sum of the rights of the individuals."

*Seventh and Lastly,* they do not deny that it is a debt of the government to be paid by the people. How is this debt created or declared? It is not in the name of the Citizens. It is in the name of the government or one of its instrumentalities. Who shall pay this debt? Not tourist, not "out-siders", but only the citizens and inhabitants living inside that town or that city—and they are walled in by their very existence there. They must pay the debt: (1) by criminal compulsion from $2.00 to $5.00 per day fine for failure to pay the obligation created by the government (Ordinance No. 776, Sec. 5); (2) of necessity, as they are the only source for payment; (3) and they must pay without their consent, in violation of their "liberty"—payment by force!

How are debts paid? Not with promises, not with paper, but by each citizen with hard labor and honest toil in field, factory and office! Both taxes and debts are paid this way. That is why our state forefathers said, "Those who must pay the debt, should have a voice in its creation!"

## CONCLUSION.

This Great Tribunal is being flooded with cases because the state governments fail to uphold the local liberties of the free people; because they fail to comprehend the complete whole rationale of our great system and way of life.

We are the last stronghold of liberty in the World. In reapportionment, desegregation and the many other great decisions unholding the rights of the individual freedom, this Great Tribunal is rising to carry forth the Torch of Liberty for each and all—to keep it a government of the people, by the people and for the people; and not a government of the "select few" who rule! Mr. Jefferson said the secret was in making the people "the depository of the powers respecting themselves." And "placing under every one what his own eye may superintend." And we conclude with confidence, where the Kentucky forefathers left to the individual citizens the right to superintend their local debts, as a constitutional guarantee, the right now invaded, this Great Tribunal will come to the rescue of right and liberty! And then, "all will be done for the best."

Respectfully submitted.

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Glasgow, Kentucky,

*All Attorneys and Counsellors for the Appellants.*

**Proof of Service.**

For appellants, C. L. Bell, of counsel, certifies that on the 13th day of September 1963 he served the foregoing "Appellants' Reply and Brief to Appellees' Motion and Brief" by mailing a copy in the United States Mails, postage prepaid, to the respective appellees and counsel of record, to-wit:

(1) On the City of Bowling Green, Kentucky to the Hon. G. D. Milligan, City Solicitor and Attorney for said city and appellees, and its Mayor, Hon. Bob Graham, at Bowling Green, Kentucky;

(2) On the Water-Sewer and Sanitation Commission by copy to its members individually and its Attorney of record, Hon. Charles Reynolds, all of Bowling Green, Kentucky;

(3) Hon. Squire R. Ogden, 610 Marion E. Taylor Building, Louisville, Kentucky, Counsel for Appellees;

(4) On the Commonwealth of Kentucky by copy unto Hon. Bert Combs, Governor and Hon. John Breckinridge, Attorney General, both of Frankfort, Kentucky.

Certificate of service is made pursuant to Rule 33(3)(b), Rules of the Supreme Court of the United States.

C. L. Bell

C. L. Bell

Subscribed and sworn to before me this 13th September 1963, by C. L. Bell, of counsel for appellees, to be true and correct.

Notary Public, Jefferson Co., Ky.

(Seal)

My Comm. expires ____ day of _____, 19___.